

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Annual Revenue Requirement Determination of the California Department of Water Resources and Related Issues.

Rulemaking 13-02-019
(Filed February 28, 2013)

**DECISION ADOPTING SETTLEMENT ON THE RATEMAKING TREATMENT
OF COSTS INCURRED BY THE CALIFORNIA DEPARTMENT OF WATER
RESOURCES ARISING FROM THE KERN RIVER FIRM TRANSPORTATION
SERVICE AGREEMENT NO. 1724**

1. Summary

By this decision, the Commission approves a *Settlement Agreement By and Between San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company* (Settlement Agreement) (Attachment A), regarding the Kern River Firm Transportation Service Agreement No. 1724. Adoption of the Settlement Agreement does not change the California Department of Water Resources' authorized 2013 or 2014 Revenue Requirement Determination, but instead is a redistribution of authorized amounts allocated among San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company.

2. Background

On August 1, 2013, the California Department of Water Resources (CDWR) served its "Notice of Determination of Revenue Requirements" (Notice), "Determination of Revenue Requirements For the Period January 1, 2014 through

December 31, 2014” (2014 Determination), and its memorandum to Commission President, Michael R. Peevey from DWR’s Acting Deputy Director of California Energy Resources Scheduling, John Pacheco (these three documents are attached) on the service list in Rulemaking (R.)13-02-019. The memorandum “advises and notifies” the Commission of DWR’s 2014 Determination, and requests the Commission to “calculate, revise and impose” the Bond Charges and Power Charges in accordance with Articles V and VI of the Rate Agreement between CDWR and the Commission.

On August 7, 2013, San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E) (jointly referred to as the Settling Parties), filed a *Motion for Approval of Uncontested Settlement and Expedited Interim Order by San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company* (Motion) regarding the Kern River Firm Transportation Service Agreement No. 1724 (TSA 1724), with the *Settlement Agreement By and Between San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company* (Settlement Agreement) attached.

In its October 19, 2012 comments to the final revised 2013 Revenue Requirement in Rulemaking (R.)11-03-006, SDG&E requested that it be permitted to reserve its rights, regarding the issue of TSA 1724.¹ SDG&E wished to reserve the right to contest the future determination of certain costs and the potential allocation among the utilities of such costs related to a pending TSA 1724

¹ The TSA was signed in 2003 and expires 2018. The TSA was associated with the expired contract with Sunrise Power Company, LLC.

contract liability raised by the CDWR in the final revised 2013 Revenue Requirement. As this was an ongoing issue, we authorized the inclusion of these costs in CDWR's 2013 revenue requirement on an interim basis, subject to refund pending the resolution of allocation of dollars associated with TSA 1724.² Subsequently, parties met and discussed this issue at a workshop held on April 29, 2013.

Pursuant to the Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) issued September 13, 2013, CDWR agreed to include three alternative scenarios in its 2014 Determination Update: 1) if the TSA Settlement Agreement has not yet been resolved; 2) if the TSA Settlement Agreement has been resolved by Commission decision; and 3) if the TSA Settlement Agreement has been resolved by Commission decision and SDG&E seeks and receives Kern River's consent to a permanent and unconditional release of CDWR from TSA 1724.

Parties agreed to an expedited comment period on the proposed decision regarding the TSA Settlement Agreement. Upon its issuance for comment, the proposed decision regarding the TSA Settlement – parties will have 10 days to file and serve Opening Comments 5 days to file and serve Reply Comments.

3. The Settlement Agreement

The Settling Parties met and conferred, and ultimately reached a settlement regarding TSA 1724, resolving this outstanding issue of cost allocation. No protests were filed in response to the Motion to approve the Settlement Agreement. Rather than summarize every term of the Settlement

² See Decision (D.)12-11-040 at 7-8.

Agreement attached to the Motion, we summarize the key portions of the Settlement Agreement as follows.

1. CDWR shall record the full amount of any costs and revenues related to TSA 1724 for the period commencing July 1, 2012, and continuing until such time as CDWR no longer incurs costs and/or receives revenues related to TSA 1724, in the SDG&E Utility-Specific Balancing Account:
 - a. SDG&E waives any right to contest the allocation of these costs and/or revenues, for ratemaking purposes, to its Utility-Specific Balancing Account.
2. The Settling Parties shall recommend that CDWR submits its 2014 annual revenue requirement, for ratemaking purposes, that includes and implements (a) a one-time \$30 million credit to the SDG&E Utility-Specific Balancing Account, (b) a one-time \$15 million debit entry to the SCE Utility-Specific Balancing Account, and (c) a one-time \$15 million debit entry to the PG&E Utility-Specific Balancing Account:
 - a. The foregoing credit and debit entries represent, for ratemaking purposes, the one-time adjustments implementing the allocation of the costs of TSA 1724 incurred by CDWR for the period July 1, 2012, until such time as CDWR no longer incurs any such costs, as determined by the Settling Parties to represent a fair compromise of the issues related to the allocation of such costs. The debit entries to be recorded to the SCE and PG&E Utility-Specific Balancing Accounts include:
 - i. the Kern River rate settlements previously allocated by CDWR and the Commission to SCE and PG&E in the amounts of \$6,280,049 and \$5,579,328, respectively; and

- ii. additional amounts in settlement of all issues related to TSA 1724 raised by SDG&E in this rulemaking.
- 3. SDG&E shall seek authority from the Commission to execute such agreements with CDWR as may be necessary:
 - a. For SDG&E to provide such assistance to the Department in the management of the shipper's rights under TSA 1724 as CDWR and SDG&E may agree would be beneficial to California electric customers, including but not limited to SDG&E acting as CDWR's agent for the purposes of managing the capacity contracted under TSA 1724 and scheduling the use of that capacity; and,
 - b. For SDG&E to effect a permanent and unconditional release of TSA 1724 from CDWR to SDG&E (*i.e.*, a full novation). Upon authorization by the Commission to effect such a release, SDG&E shall make all reasonable efforts to effect the release and obtain Kern River's consent to the release upon commercially reasonable terms and conditions.
- 4. SDG&E shall seek authority from the Commission to assist CDWR in the pursuit of claims brought by CDWR against any parties in such available and appropriate forums as CDWR and SDG&E might choose and as may be reasonably calculated to reduce the costs of TSA 1724 to California electric customers, provided:
 - a. SCE and PG&E shall assist SDG&E in these efforts by reviewing, supporting and/or supplementing SDG&E's filings to such extent as SDG&E may reasonably request, but SCE and PG&E shall not, without their further prior written and voluntary agreement, bear any of the costs of litigation incurred by SDG&E in the pursuit of any such claims; and

- b. In the event SDG&E receives any benefit from the pursuit of any such claims, SDG&E shall report the nature and extent of the benefit to PG&E and SCE and, thereafter, to the Commission. SDG&E, PG&E and SCE agree that such benefit shall be allocated to each utility on an equal basis, that is, each utility should receive one-third of any such the benefit.

4. Discussion

4.1 Standard of Review

We review this uncontested settlement pursuant to Rule 12.1(d) of the Commissions Rules of Practice and Procedure,³ which provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.” We find the Settlement Agreement meets the Rule 12.1(d) criteria, and adopt it in its entirety herein, and discuss each of the three criteria below.

4.2 Settlement Agreement is Reasonable in Light of the Whole Record

Initially, we note the circumstances of the Settlement Agreement, particularly its endorsement by the parties affected by the issues addressed in the Settlement Agreement, and that no parties protested or commented on the Settlement Agreement. In addition to CDWR’s 2013 Revenue Requirement determination which was resolved in D.12-11-040, and requested 2014 Revenue Requirement, the Joint Parties filed individual prehearing conference statements, briefs, and comments, and participated in discussions at the workshop. Thus,

³ All references are to the Commission’s Rules of Practice and Procedure, unless otherwise noted.

the Settling Parties reached a Settlement Agreement after careful analysis of the issues by each party representing a broad array of affected interests. The record also shows that the Settlement Agreement was reached after substantial give-and-take between the parties which occurred at the workshop and during settlement conferences. This give-and-take is demonstrated by the positions initially taken by parties and the final positions agreed upon in the Settlement Agreement.

The Settlement Agreement results in a reasonable compromise between the otherwise irreconcilable principles and legal theories of the adverse parties and, further, results in the distribution of the amounts in controversy among the ratepayers of all of the utilities in a manner roughly approximate to the differences between their original positions.

The Settlement Agreement is also consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.⁴ This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.⁵ Thus, we conclude the Settlement Agreement is reasonable.

4.3 Settlement Agreement is Consistent with Law

The Settling Parties believe that the terms of the Settlement Agreement comply with all applicable statutes. These include, e.g., Pub. Util. Code § 451,

⁴ See D.05-03-022 at 9.

which requires that utility rates must be just and reasonable, and Pub. Util. Code § 454, which prevents a change in public utility rates unless the Commission finds such an increase justified. We agree that the required showings under Pub. Util. Code §§ 451 and 454 have been made. Further, nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

4.4 Settlement Agreement is in the Public Interest

The Settlement Agreement is in the public interest and in the interest of the Settling Parties' customers. The agreed-upon allocations in the Settlement Agreement resolve the unresolved TSA 1724 issue in the current proceeding.

Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties. Finally, we note that the settling parties comprise the majority of the active parties in this proceeding, and we do not know of any party who contests the Settlement Agreement. Thus, the Settlement Agreement commands the unanimous sponsorship of the affected parties who fairly represent the interests affected by the Settlement Agreement. We find that the evidentiary record as well as D.12-11-040, contains sufficient information for us to determine the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter. For all these reasons, we approve the Settlement Agreement as proposed.

⁵ See D.05-03-022 at 9.

4.5 Conclusion

For the reasons discussed above, the Commission adopts the Settlement Agreement in its entirety. We discuss the main requirements of the Settlement Agreement below.

Adoption of the settlement requires a re-allocation of costs in CDWR's 2014 Revenue Requirement. Pursuant to a request by the assigned ALJ at the September 5, 2013 PHC, CDWR will provide three scenarios of its updated 2014 Revenue Requirement in its October 18, 2013 update (Update). With adoption of the Settlement Agreement in its entirety, amounts of selected aspects of the Settlement Agreement will be determined at a later date.

In particular, the Commission's upcoming decision regarding CDWR's 2014 Revenue Requirement shall use Scenario 2 revenue requirement amounts provided by CDWR in its 2014 Determination Update (October 18, 2013). Scenario 2 considers adoption of the Settlement Agreement in CDWR's 2014 Revenue Requirement request. One issue in the Settlement Agreement, SDG&E's request and receipt of Kern River's consent to a permanent and unconditional release of CDWR from Kern River regarding TSA 1724, requires action by SDG&E subsequent to this decision regarding the Settlement Agreement. Therefore, consideration of these actions cannot be incorporated in the Commission's decision regarding CDWR's 2014 Revenue Requirement, until after these actions are taken. Once SDG&E seeks and receives Kern River's consent to a permanent and unconditional release of CDWR from Kern River for the TSA 1724, SDG&E may file a Petition for Modification of the Commission's decision regarding CDWR's 2014 Revenue Requirement (which considers Scenario 2 and should be issued in December 2013), incorporating the effect of these actions (pursuant to Scenario 3) on CDWR's 2014 Revenue Requirement.

The Commission does not predetermine the efficacy of SDG&E's assistance to CDWR regarding the management of TSA 1724, pursuit of claims regarding TSA 1724; or release of TSA 1724 to SDG&E in the future, but agree that SDG&E shall seek authority from the Commission to execute such agreements and incur costs related to such actions. SCE and PG&E shall assist SDG&E in these efforts, but will not bear any of the costs of litigation incurred by SDG&E in the pursuit of any such claims, without their further prior written and voluntary agreement.

SDG&E agrees that if it receives any benefit from the pursuit of any such claims, it shall report the nature and extent of the benefit to PG&E and SCE and, thereafter, to the Commission. SDG&E, PG&E and SCE agree that such benefit shall be allocated to each utility on an equal basis, that is, each utility should receive one-third of any such the benefit. The Commission requires that SDG&E shall inform it via a motion in the current proceeding or its successors regarding allocation of such benefits.

5. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of Assembly Bill (AB) 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of CDWR's revenue requirement and the establishment and implementation of the Bond Charge and Power Charges necessary to recover that revenue requirement. Pursuant to Pub. Util. Code § 1731(c), any application for rehearing of this decision is due within 10 days after the date of issuance of this decision. The procedures contained in Pub. Util. Code § 1768 apply to the judicial review of a Commission order or decision that interprets, implements, or applies the provisions of AB 1X.

6. Comments on Proposed Decision

The proposed decision of ALJ Seaneen M. Wilson in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed pursuant to Rule 14.3. At the PHC held on September 5, 2013, pursuant to Rule 14.6(b), parties agreed to a shortened comment period, with Opening Comments due 10 days from the mailing of this proposed decision and Reply Comments due 10 days from the mailing of this proposed decision and Reply Comments due five days subsequent to that date. No comments were filed.

7. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. In addition to authorizing CDWR's 2013 Revenue Requirement in D.12-11-040, the Commission also authorized the inclusion of costs related to TSA 1724 on an interim basis, subject to refund pending the resolution of allocation of dollars associated with TSA 1724.
2. The Settlement Agreement does not change CDWR's authorized 2013 or 2014 Revenue Requirements, but instead is a re-allocation of previously authorized amounts allocated among SDG&E, SCE, and PG&E.
3. On August 7, 2013, the Settling Parties filed a Motion requesting that the Commission adopt a Settlement Agreement that addressed the allocation of costs regarding TSA 1724, and future actions by the individual Settling Parties.
4. All remaining issues regarding TSA 1724 are encompassed by, and resolved in, the Settlement Agreement, except for future related requests detailed in the Settlement Agreement or related to actions resulting from the Settlement

Agreement. The Commission does not predetermine the efficacy or reasonableness of these future requests at this time.

5. The parties to the Settlement Agreement consist of those parties affected by the issues encompassed by the Settlement Agreement.

6. No party protested the Settlement Agreement.

7. The parties are fairly reflective of the affected interests.

8. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.

9. The Settlement Agreement, D.12-11-040, CDWR's requested 2014 Revenue Requirement, prehearing conference statements, briefs, comments, and discussion at the workshop, conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

10. The Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.

11. SDG&E's request and receipt of Kern River's consent to a permanent and unconditional release of CDWR from Kern River regarding TSA 1724, requires action by SDG&E subsequent to this decision regarding the Settlement Agreement. Therefore, consideration of these actions cannot be incorporated in the Commission's decision regarding CDWR's 2014 Revenue Requirement, until after these actions are taken.

12. The disposition of funds set forth in the Settlement Agreement is reasonable.

Conclusions of Law

1. Because the Settlement Agreement (Attachment A) is reasonable in light of the whole record, consistent with law, and in the public interest, it should be approved.

2. The Commission's upcoming decision regarding CDWR's 2014 Revenue Requirement (should be issued in December 2013) should use Scenario 2 revenue requirement amounts provided by CDWR in its 2014 Determination Update. Scenario 2 considers adoption of the Settlement Agreement in CDWR's 2014 Revenue Requirement request.

3. Once SDG&E seeks and receives Kern River's consent to a permanent and unconditional release of CDWR from Kern River for the TSA 1724, SDG&E should file a Petition for Modification of the Commission's decision regarding CDWR's 2014 Revenue Requirement (which considers Scenario 2 and should be issued in December 2013), incorporating the effect of these actions (pursuant to Scenario 3) on CDWR's 2014 Revenue Requirement.

4. Rulemaking 13-02-019 should remain open.

O R D E R**IT IS ORDERED** that:

1. The *Settlement Agreement By and Between San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company* (Attachment A), regarding the Kern River Firm Transportation Service Agreement No. 1724, as set forth in the *Motion for Approval of Uncontested Settlement and Expedited Interim Order by San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company*, is adopted.

2. The Commission's upcoming decision regarding the California Department of Water Resources (CDWR) 2014 Revenue Requirement (to be issued in December 2013) shall use Scenario 2 revenue requirement amounts provided by CDWR in its 2014 Determination Update. Scenario 2 considers adoption of the *Settlement Agreement By and Between San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company* in CDWR's 2014 Revenue Requirement request.

3. Once San Diego Gas & Electric Company (SDG&E) seeks and receives Kern River's consent to a permanent and unconditional release of the California Department of Water Resources (CDWR) from Kern River for the Transportation Service Agreement No. 1724, SDG&E shall file a Petition for Modification of the Commission's decision regarding CDWR's 2014 Revenue Requirement (which considers Scenario 2), incorporating the effect of these actions (pursuant to Scenario 3) on CDWR's 2014 Revenue Requirement.

4. Rulemaking 13-02-019 should remain open.

This order is effective today.

Dated _____, at San Francisco, California.